



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Monitronics
File: B-228219
Date: November 30, 1987

DIGEST

1. Under brand name or equal invitation for bids (IFB), contracting agency properly rejected as nonresponsive bid offering alternative product where bid lacked descriptive material necessary to determine whether offered product was equal to brand name.
2. In determining responsiveness of bid offering equal product under brand name or equal IFB, contracting agency improperly considered descriptive material furnished by bidder after bid opening where material was not commercially available before bid opening.

DECISION

Monitronics protests award to any other bidder under invitation for bids (IFB) No. DTFA-02-87-B-00628, issued by the Federal Aviation Administration (FAA) for modification kits for navigational equipment. We deny the protest in part and sustain it in part.

The IFB called for bids on the modification kits as described in the purchase description attached to the IFB and two other items, including printed circuit boards, to be stocked as spare parts in support of the kits. The line item for the circuit boards was issued on a brand name or equal basis, and the IFB incorporated a standard clause requiring bidders offering alternative products to furnish with their bids all descriptive material necessary to determine whether the product offered is equal to the brand name product.

Five bids were received at bid opening on August 5, 1987. The two lowest priced bidders, Monitronics and Frontier Engineering, Inc., offered circuit boards other than the brand name model called for in the IFB. Neither bidder, however, submitted any descriptive material with its bid

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regarding the equality of its proposed circuit board with the brand name. As a result, the contracting officer first attempted to locate commercial literature regarding the bidders' circuit boards in the contracting agency's files; no materials describing either of the products were found. Contracting officials then made a site visit to Monitronics on August 26 to obtain any descriptive material regarding its proposed circuit board which was in existence before bid opening. Monitronics states that it informed FAA during the site visit that it had based its bid for the circuit board, which was not a standard item in Monitronics' inventory, solely on a list of required parts it prepared after review of the purchase description in the IFB. In Monitronics' view, in light of the detailed purchase description and the simple design required, further material, such as a design drawing of the circuit board, was not required to formulate the bid and was not prepared. The price list Monitronics states that it had prepared was not given to FAA during the site visit, however. Based on the lack of any descriptive material which could be used to determine the equality of Monitronics' proposed circuit board, FAA ultimately found Monitronics' bid nonresponsive.

Two days after visiting Monitronics, FAA officials made a site visit to the second low bidder, Frontier. Frontier advised them that it had prepared elementary design drawings of its proposed circuit board in connection with its bid and would furnish them to FAA. Because the drawings had been forwarded after bid opening to another location, Frontier's corporate office, they were not provided immediately; in accordance with a deadline imposed by FAA, however, the drawings were delivered to FAA by the close of business on August 28, the date of the site visit.

Based on an examination of the drawings provided by Frontier, FAA decided that it had sufficient information to find that Frontier's proposed circuit board was equal to the brand name model. As a result, Frontier is now in line for award, although no award has yet been made.

Monitronics contends that it was improper for FAA to reject its bid for lack of descriptive material on its proposed circuit board, and also challenges FAA's consideration of the descriptive material furnished by Frontier after bid opening. As explained in detail below, while we find that Monitronics' bid properly was rejected for lack of descriptive material, we sustain the protest in part based on our finding that it was improper for FAA to consider the descriptive material furnished by Frontier after bid opening in determining the responsiveness of Frontier's bid.

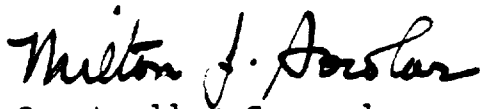
To be responsive to a brand name or equal IFB, a bid offering an allegedly equal product must contain sufficient descriptive material to permit the contracting agency to assess whether the offered alternative has the salient characteristics specified in the IFB. Rocky Mountain Trading Co., B-221060, Jan. 24, 1986, 86-1 CPD ¶ 88. Contrary to Monitronics' contention, a bidder's belief that its product is equal to the brand name, or a bidder's promise to furnish a product conforming to the salient characteristics, does not satisfy this requirement since it is the contracting agency's role, not the bidder's, to evaluate the equality of the bidder's product. Interand Corp., B-224512.2, Dec. 31, 1986, 66 Comp. Gen. _____, 87-1 CPD ¶ 5, aff'd on reconsideration, B-224512.3, et al., Apr. 17, 1987, 87-1 CPD ¶ 421. To the extent that a bidder fails to submit sufficient descriptive material with its bid for the agency to evaluate the equality of its product, the bid is nonresponsive. Vista Scientific Corp., B-210416, Apr. 5, 1983, 83-1 CPD ¶ 365. Since in this case Monitronics' bid contained no descriptive material regarding its proposed circuit board and FAA was unable on its own to locate any commercial literature on the product, FAA properly rejected Monitronics' bid as nonresponsive.

FAA also acted improperly, however, by considering the descriptive material submitted by Frontier after FAA's site visit. Where descriptive data is necessary to evaluate an alternative product offered under a brand name or equal IFB, the bidder's failure to submit such data before bid opening generally requires rejection of the bid as nonresponsive. Vista Scientific Corp., B-210416, supra. The only situation in which a contracting agency may consider descriptive material submitted after bid opening is where the material was commercially available before bid opening. Data-Chron, Inc., B-196801, July 29, 1980, 80-2 CPD ¶ 78. To permit a bidder to submit other than preexisting, commercially available data after bid opening would improperly give the bidder control over the responsiveness of its bid. 50 Comp. Gen. 137, 140 (1970). Here, the material furnished by Frontier--pencil diagrams drawn up during preparation of its bid--clearly was not commercially available before bid opening. Further, the material was not submitted until after the site visit on August 28, more than 3 weeks after bid opening on August 5, and, as noted above, it was not immediately available when the FAA officials arrived for the site visit. Under these circumstances, there is insufficient assurance that the diagrams were in existence before bid opening to allow their consideration in determining the responsiveness of Frontier's bid, and they certainly were not commercially available. In view of the fact that without the descriptive literature, FAA could not determine

whether Frontier's circuit board was equal to the brand name model, its bid should have been rejected as nonresponsive.

Since the bids of both Monitronics and Frontier were nonresponsive, neither bidder is eligible for award under the IFB. As noted above, three other bids were submitted under the IFB. There is some indication in the record that two of the three remaining bids contain mistakes and that the third bid price was considered unreasonably high. Under these circumstances, FAA should either make award to the bidder determined to be next in line for award, if appropriate, or cancel the IFB and resolicit.

The protest is denied in part and sustained in part.



Acting Comptroller General
of the United States